

600.020 Sexual Harassment under Title IX - for matters involving conduct alleged to have occurred on or after August 14, 2020

Executive Order 40, 4-8-14; Revised 6-19-14; Revised 9-22-14 by Executive Order 41. Revised 2-9-17 with an effective date of 3-1-17; Revised 7-28-20 with effective date of 8-14-20.

- A. **Sexual Harassment in Education.** The University is committed to affording equal employment and education opportunities to its employees and students, and to creating an environment free from discrimination and harassment. In furtherance of these commitments, both University policy and applicable state and federal law, prohibit all students, employees, volunteers and visitors at the University from engaging in sexual harassment in a University education program or activity against a person in the United States.

This policy applies to sexual harassment in any phase of the University's employment process, any phase of its admission or financial aid programs, and all other aspects of its education programs or activities. For purposes of this policy, "education program or activity" includes locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the conduct occurs, and includes any building owned or controlled by a student organization that is officially recognized by the University. This policy and CRR 600.030 do not apply to sexual harassment that happens outside the United States, even when the conduct occurs in an education program or activity of the University.

B. **Definitions**

1. **Sexual Harassment.** Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 - a. **"Quid Pro Quo"** - An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
 - b. **"Hostile Environment"** - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity;
 - c. **"Sexual assault"** - Any sexual act that constitutes rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape, as defined below:
 - (i) "Rape" is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical

incapacity. There is "carnal knowledge" if there is the slightest penetration of the vagina or penis by the sex organ of the other person. Attempted Rape is included.

(ii) "Sodomy" is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(iii) "Sexual Assault with an Object" is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything used by the offender other than the offender's genitalia.

(iv) "Fondling" is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

(v) "Incest" is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Missouri law.

(vi) "Statutory Rape" is sexual intercourse with a person who is under the statutory age of consent as defined by Missouri law.

- d. **"Dating Violence"** - The term "dating violence" means violence committed by a person-- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship, (ii) The type of relationship, and (iii) The frequency of interaction between the persons involved in the relationship.
- e. **"Domestic violence"** - The term "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Missouri, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Missouri.
- f. **"Stalking"** - The term "stalking" means engaging in a course of conduct directed at a specific person knowing or consciously disregarding a substantial and unjustifiable risk that the course of conduct ~~that~~ would cause a reasonable person to--(A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

2. **Consent to Sexual Activity.** Consent to sexual activity is knowing and voluntary. Consent to sexual activity requires of all involved persons a conscious and voluntary agreement to engage in sexual activity. Each person engaged in the sexual activity must have met the legal age of consent. It is the responsibility of each person to ensure they have the consent of all others engaged in the sexual activity. Consent must be obtained at the time of the specific activity and can be withdrawn at any time. Consent, lack of consent, or withdrawal of consent may be communicated by words or non-verbal acts. Someone who is incapacitated cannot consent. Silence or absence of resistance does not establish consent. The existence of a dating relationship or past sexual relations between the Parties involved should never by itself be assumed to be an indicator of consent. Further, consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Coercion and force, or threat of either, invalidates consent.
3. **Incapacitated or incapacitation.** A state in which rational decision-making or the ability to consent is rendered impossible because of a person's temporary or permanent physical or mental impairment, including but not limited to physical or mental impairment resulting from drugs or alcohol, disability, sleep, unconsciousness or illness. Consent does not exist when the Respondent knew or should have known of the other individual's incapacitation. Incapacitation is determined based on the totality of the circumstances. Incapacitation is more than intoxication but intoxication can cause incapacitation. Factors to consider in determining incapacity include, but are not limited to, the following:
 - a. Lack of awareness of circumstances or surroundings (e.g., an inability to understand, either temporarily or permanently, the who, what, where, how and/or why of the circumstances; blackout state)
 - b. Inability to physically or verbally communicate coherently, particularly with regard to consent (e.g., slurred or incoherent speech)
 - c. Lack of full control over physical movements (e.g., difficulty walking or standing without stumbling or assistance)
 - d. Physical symptoms (e.g., vomiting or incontinence).

C. **Title IX Coordinators.** Duties and responsibilities of the University's Title IX Coordinators include monitoring and oversight of overall implementation of Title IX compliance at the University, including coordination of training, education, communications and coordination with the Title IX Processes for faculty, staff, students and other members of the University community and investigation of Formal Complaints of sexual harassment, and to respond promptly to reports of sexual harassment of which the University has actual knowledge in University education programs and activities. The University may designate Deputy Coordinators as needed to assist in fulfillment of the Coordinator's duties and responsibilities. NOTE: All references to "Title IX Coordinator" throughout this policy refer to the Title IX Coordinator or the Coordinator's designee. For the purposes of this section, "actual knowledge" means notice of sexual harassment or allegations of sexual harassment to a University's Title IX Coordinator or any official of the University who has authority to institute corrective measures on behalf of the University. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the

only official of the University with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the University. The following individuals serve as Title IX Coordinators and are designated to handle inquiries regarding the Anti-Discrimination policies and to serve as coordinators for purposes of Title IX compliance:

University of Missouri System and University of Missouri-Columbia

Andy Hayes, J.D.
Title IX Coordinator

Address:

University of Missouri
320 Jesse Hall
Columbia, MO 65211

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Email: hayesas@missouri.edu
equity.missouri.edu

University of Missouri-Kansas City

KC Atchinson, J.D.
Title IX Coordinator

Address:

Administrative Center
5115 Oak Street, Room 212D
Kansas City, MO 64112

Telephone: 816-235-6705

Email: atchinsonk@umkc.edu
www.umkc.edu/titleix

Missouri University of Science and Technology

Paul Hirtz, Ph.D.
Title IX Coordinator

Address:

Technology Development Center
900 Innovation Drive, Suite 500
Rolla, MO 65409

Telephone: 573-341-4655

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University of Missouri-St. Louis

Jessica Swederske
Acting Title IX Coordinator

Address:

One University Boulevard
153 JC Penney North
St. Louis, MO 63121

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University of Missouri Health System

Julia Ware, M.D., J.D., CPHRM, CPPS
Title IX Coordinator

Address:

One Hospital Drive
Columbia, MO 65212

Telephone: 573-882-8187

Email: wareja@health.missouri.edu

If the report of alleged sexual harassment in a University education program or activity involves the University's Title IX Coordinator, reports may be made to the System Title IX Coordinator. If the report involves the System Title IX Coordinator, reports may be made to the System President. The contact information for the System President is:

Office of the President
105 Jesse Hall
Columbia, MO 65211

Telephone: 573-882-2011

Email: president@umsystem.edu

NOTE: The above-listed contact information for Title IX Coordinators may be updated as needed and without requiring the approval of the Board of Curators.

- D. **Title IX Resolution Process.** The University is committed to preventing and eliminating impermissible sexual harassment in its education programs, activities and employment. To that end, the University maintains policies regarding reporting, investigation, and resolution of complaints of sexual harassment. Specifically, please see:
Section 600.030 – Resolution Process for Resolving Complaints of Sexual Harassment Under Title IX
- E. **Designated Officials.** The following are the officials designated by the University as those who have "authority to institute corrective measures." These officials are mandated reporters and shall report to the Title IX Coordinators any information that puts them on notice of sexual harassment or allegations of sexual harassment.
1. The President of the University of Missouri System;
 2. The Chancellors of each University in the University of Missouri System;
 3. The Provosts of each University in the University of Missouri System; and
 4. The Chief Human Resource Officers for each University in the University of Missouri System.

Any person having inquiries concerning the application of Title IX should contact their respective UM System or University Title IX Coordinator.

F. Reporting Sexual Harassment

1. **Students, Employees, Volunteers, and Visitors.** Students, employees, volunteers, and visitors of the University who have experienced any form of sexual harassment are encouraged to report the incident promptly to the appropriate Title IX Coordinator listed in Section 600.020.C. above. In addition, students, volunteers, and visitors of the University who have witnessed such conduct are encouraged to report the incident promptly to the appropriate Title IX Coordinator. The University will respond to all such reports pursuant to one of its Title IX and Equity Resolution Processes (see Sections 600.030, 600.040, 600.050).

2. **Mandated Reporters.** Any employee of the University, except as noted below, who becomes aware of sexual harassment as defined in this policy is a Mandated Reporter, regardless of whether the recipient of the behavior is a student, employee, volunteer or visitor of the University.
3. **Employees with a Legal Obligation or Privilege of Confidentiality.** Employees with a legal obligation or privilege of confidentiality (including health care providers, counselors, lawyers, and their associated staff) are not considered Mandated Reporters and are not required to report when the information is learned in the course of a confidential communication. This also means that the employee seeking the exemption is employed by the University for that specific purpose and was acting in that capacity when the confidential disclosure was made. If the information is not learned in the course of confidential communication (for example, behavior is observed in class) then the employee has the same obligation as a Mandated Reporter.
4. **Designated Confidential Employees.** Consistent with the law and upon approval from the Office of the General Counsel, Universities may also designate non-professional counselors or advocates as confidential for purposes of this policy and, therefore, excluded from the definition of Mandated Reporters.
5. **Required Reporting.** A Mandated Reporter is required to promptly report the information to the appropriate Title IX Coordinator. The Mandated Report must be made regardless of whether the person reporting the information to the Mandated Reporter requests confidentiality and regardless of how the Mandated Reporter becomes aware of the offensive behavior (personal observation, direct information from the subject of the behavior, indirect information from a third party, etc.). If the Complainant requests confidentiality or that a report not be pursued, the Mandated Reporter should warn the Complainant that, at this stage in the process, the Mandated Reporter must report all known information to the Title IX Coordinator.
6. **Content of Mandated Report to Title IX Coordinator.** Mandated Reporters must report all details that they possess. This includes names of the Parties, if known, and all other information in the Mandated Reporter's possession.
7. **Non-compliance.** Failure to comply with this policy can result in disciplinary action. Employees also are cautioned that non-compliance with this policy may increase their risk of personal liability. Further, an individual who fails to report as required under this policy may be determined to be ineligible for defense or protection under Section 490.010 of the University's Collected Rules and Regulations for any associated claims, causes of action, liabilities or damages.

G. Retaliation, False Reporting, and Witness Intimidation or Harassment.

1. Retaliation is any adverse action taken against a person because of that person's participation or refusal to participate in the process set forth in CRR 600.030. Any person who engages in such retaliation shall be subject to disciplinary action, up to and including expulsion or termination, in accordance with applicable procedures. Any person who believes they have been subjected to retaliation is encouraged to notify the Title IX Coordinator. The University will promptly respond to all claims of retaliation in accordance with this policy. Examples of prohibited retaliation include, but are not limited to, giving a

lesser grade than the student's academic work warrants because the student filed a report or Formal Complaint of sexual harassment; giving lower than justified performance appraisals because a person was a witness in an investigation of alleged sexual harassment; and threatening to spread false information about a person for filing a report or Formal Complaint of sexual harassment.

2. False reporting is making an intentional false report or accusation in relation to this policy as opposed to a report or accusation, which, even if erroneous, is made in good faith.
3. The University prohibits attempted or actual intimidation or harassment of any potential Party or witness. No individual participating in an investigation relating to a report or Formal Complaint that a violation of this policy has occurred should, directly or through others, take any action which may interfere with the investigation.
4. For situations involving alleged retaliation, false reporting, and witness intimidation or harassment, the Title IX Coordinator will refer the matter to the appropriate University process.

H. **U.S. Department of Education—Office for Civil Rights.** Inquiries concerning the application of Title IX also may be referred to the United States Department of Education's Office for Civil Rights. For further information on notice of nondiscrimination and for the address and phone number of the U.S. Department of Education office which serves your area call 1-800-421-3481.

The State of Missouri Regional Office for Civil Rights is located in Kansas City and is available to provide assistance.

Office for Civil Rights
U.S. Department of Education
One Petticoat Lane
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FAX: 816-268-0559
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